PUBLIC PROSECUTOR

v.

LOW AIK BOON [1]

HIGH COURT MALAYA, KUALA LUMPUR
ZAKARIA YATIM J
[FT CRIMINAL TRIAL NO. 12 OF 1983]
15 DECEMBER 1987

CRIMINAL PROCEDURE: *Powers of Court under s. 425 of the Criminal Procedure Code - Prosecution witness offered to defence after close of prosecution case - Purpose of s. 425.*

At the trial of the accused on a charge of trafficking in dangerous drugs, the learned deputy public prosecutor asked the Court to exercise its powers under s. 425 of the Criminal Procedure Code to call Low Aik Seng, the brother of the accused, as a witness.

The learned deputy also asked the Court to call 3 newspaper reporters. The reporters were not on the list of prosecution witness.

The defence Counsel objected to these application at this stage of the proceedings.

The Court was required to make a ruling on the application.

Held:

[1] Section 425 of the Criminal Procedure Code empowers the Court to call a witness after the prosecution has closed its case, however, this should not be used by the prosecution to improve their case by this new evidence.

[2] In this case, the prosecution had not been taken by surprise by the evidence of the defence witness. It was quite clear that the defence was going to rely on the evidence relating to the car bearing registration no. WAB 1260 and of the ownership of the car, yet the prosecution did not deem it fit to call Low Aik Seng before they closed their case.

[3] The evidence of the 3 reporters was not essential to a just decision of the case, and further, if the said witnesses were called, they would be for the purpose of rebutting the defence case and entitled to do.

[4] Application by the learned deputy prosecutor dismissed.

[Ruling accordingly.]

Cases referred to:
Loke Poh Siang v. Public Prosecutor [1957] 23 MLJ 107
Public Prosecutor v. Boo Chew Hia [1963] 29 MLJ 33
Ramachandra Prasad v. Emperor [1937] AIR Patna 246
Jametray Kewalji Govain v. State of Maharashtra [1968] AIR SC 178

Legislation referred to:
Criminal Procedure Code, s. 425

For the accused - Manjeet Singh; M/s. Lawrence, Dhilion & Associates
Deputy Public Prosecutor - Tan Poh Lai

JUDGMENT

Zakaria Yatim J:

After the prosecution had closed their case and when the defence case was being heard, the learned Deputy made an application to call the brother of the accused as their witness. The witness, Low Aik Seng was listed as a prosecution witness. The prosecution, however did not call him as a witness but instead offered him to the defence after the prosecution had closed their case. The learned Deputy asked the Court to exercise its power under s. 425 of the Criminal Procedure Code to call Low Aik Seng as a witness. The learned Deputy also asked the Court to allow her to call three newspaper reporters of three newspapers. These three reporters were not in the list of prosecution witness.

Learned Counsel for the accused objected to the application to call these persons as witnesses at that stage of the proceedings.

Section 425 provides that the Court may at any stage of the trial summon any person as a witness and the Court shall summon and examine such person if his evidence appears to be essential to the just decision of the case.

Under this section the Court has the power to call a witness after the prosecution have closed their case. *Loke Poh Siang v. Public Prosecutor* [1975] 23 MLJ 107 and *Public Prosecutor v. Boo Chew Hia* [1963] 29 MLJ 33.

The purpose of the section is not to enable the prosecution to fill up gaps in their case and to improve their case by new evidence. *Ramachandra Prasad v. Emperor* [1937] AIR Patna 246. This section also does not allow the prosecution to rebut the defence evidence unless the defence has brought forward suddenly and unexpectedly. *Jametray Kewalji Govain v. State of Maharashtra* [1968] AIR SC 178.

In the instant case the prosecution is not taken by surprise by the evidence of the defence witnesses. Mr. Manjeet Singh did question Inspector Hassan Malek, the investigation officer about the car WAB 1260 and its owner. Inspector Hassan told the Court in cross-examination that the owner of the car was Low Aik Seng. Mr. Low Aik Seng's name appeared in the list of witnesses for the prosecution. When Detective Cpl. Tan Kim Huat was cross-examined it was put to him that the packet containing the heroin was discovered from the said car. It was quite clear that the defence was going to rely on the evidence of the car WAB 1260 and on the ownership of the car. Yet the prosecution did not deem it fit to call Low Aik Seng before they closed their case.

With regard to the newspaper cutting, Inspector Hassan was questioned about the press statement made by ACP Yahya bin Isa on 27 April 1983 on the arrest of the accused. It was put to the witness that at the press conference ACP Yahya said that the police pulled a man out but nothing was found on him and police searched the car and found the drugs in the car. From the way Mr. Manjeet Singh cross-examined the witnesses it was obvious that the defence wanted to rely on the press statement.

The prosecution was therefore not taken by surprise.

The next question for the Court to consider is whether the evidence of the witnesses whom the prosecution wish to call is essential to the just decision of the case. In my opinion the evidence of these witnesses is not essential to a just decision in this case. Firstly the prosecution can cross-examine the defence witnesses on those two points or on any other

points raised by the defence. Secondly, if the said witnesses are called, the effect of the evidence would be for the purpose of rebutting the defence case and the prosecution is not entitled to do so in this case.

For the reasons stated above I dismiss the application to call the four witnesses.

Also found at [1990] 1 CLJ 981